attempt to limit a fee on a fee; relying on *Palmer* v. *Cook* (1896), 159 Ill. 300, 42 N. E. 796, 50 Am. St. Rep. 165. In the case relied on the court had held, that the statute declaring that the words *convey and warrant* shall operate in deeds to pass a fee did have that effect and made void the attempted limitation over in these words: "in consideration of one dollar in hand paid, doth hereby grant, bargain, sell, convey, and warrant to Mary A. Stewart and Emily C. Stewart [grantor's daughters] of Macoupin county, the following real estate [describing it]; * * * and further, in case either of the grantees dies without a heir, her interest to revert to the survivor." The cases are rather close; but the words *her interest* and *revert* indicate that the grantor intended the fee to vest in the original grantees, which intention does not appear in the present case.

DEEDS—UNCERTAIN GRANTEE—HEIRS OF LIVING.—"This deed * * * between James Roberson and wife * * * of the first part and John B. F. Roberson heirs, of the County of Letcher and State of Ky., of the second part, witnesseth, that for and in consideration of the natural love and affection they have for their sd. son, and especially for his heirs, and for the further consideration of the performance of a contract herfb. to be written on their part, doth grant, bargain, and sell to the heirs of sd. John * * * [certain land described] to have and to hold to the said heirs of John" &c. *Held,* that the children of John took as purchasers, and the deed was not void for uncertainty of the grantees, though John was living. *Roberson* v. *Wampler* (1905), — Va. —, 51 S. E. Rep. 835.

It is an old, and generally admitted, doctrine that a grant or devise to the heirs of a living person is void for uncertainty. But the courts are astute in sustaining such grants by finding something in the transaction to indicate that the word *heirs* is not used in the technical sense, and that children or some other persons were meant. Usually this is found from expressions in the deed indicating that the grantor knew that the person named was then living. In the case above named the deed seems to throw no light on that point, unless the words "their sd. son" in the consideration clause refer to John, whose "heirs" are grantees. Several late cases on the question are cited in the opinion, including: *Heath* v. *Hewitt* (1891), 127 N. Y. 166, 27 N. E. 959, 13 L. R. A. 46, 24 Am. St. Rep. 438; *Seymour* v. *Bowles* (1898), 172 Ill. 521, 50 N. E. 122, in which the grantees were the "minor heirs"; *Fountain County Coal Co.* v. *Beckleheimer* (1885), 102 Ind. 82, 1 N. E. 202, 52 Am. Rep. 645, in which the grantees were the "present heirs," and numerous older cases.

DEEDS—VARIANCE BETWEEN THE GRANTING CLAUSE AND THE HABENDUM.—Where the granting clause of a deed follows the statutory form for a conveyance in fee simple and the habendum clause limits the estate to a life estate without mentioning the remainder, *held,* that the deed passed a life estate to the grantee. *Evans* v. *Dunlap* (1905), — Ind. —, 75 N. E. Rep. 297.

The technical rule is "that when the habendum is repugnant and contrary to the granting clause it is void. It can only affect the grant when it can be construed as consistent with the premises". (71 Mich. 633-640). At the

common law this was especially true where the premises expressly granted a fee and the habendum attempted to limit it to a life estate. Blackstone says (Book 2, p. 298), "Had it been in the premises 'to him and his heirs', habendum 'to him for life', the habendum would be utterly void." Where, however, the granting clause follows the statutory form using, for example, the words "convey and warrant", this only passes a fee simple by implication, and a limitation of a life estate in the habendum is valid. *Welch* v. *Welch*, 183 Ill. 237; *Doren* v. *Gillum*, 136 Ind. 134. Courts today pay more regard to the deed as a whole in ascertaining the intentions of the parties than they do to rules concerning the relative merits of the various clauses. *Meacham* v. *Blaess*, — Mich. —, 104 N. W. R. 579; *Phillips* v. *Collinsville Granite Co.* — Ga. —, 51 S. E. R. 666; *Shepard Co.* v. *Shibles*, — Me. —, 61 Atl. 700.

DIVORCE—ALIMONY—PAYMENT AFTER HUSBAND'S DEATH.—Plaintiff obtained a divorce and alimony "as long as she shall live" and a mortgage was given to secure payments. In an action to foreclose the mortgage, default having been made after the divorced husband's death, *held*, that the obligation to pay alimony ceased with their 'joint lives'. *Wilson* v. *Hinman* (1905), — N. Y. —, 75 N. E. Rep. 236.

It had been the settled rule in New York that when there was some provision in the decree to perpetuate the payments, it could be enforced after the husband's death. See the same case in 90 N. Y. Supp. 746, 99 App. Div. 41; *Burr v. Burr*, 10 Paige 20, 7 Hill 207; *Galusha* v. *Galusha*, 43 Hun 181; *Johns* v. *Johns*, 60 N. Y. Supp. 865, 166 N. Y. 613, 59 N. E. Rep. 1124. It is the rule in some states that when there is a plain intent for the alimony to continue after their joint lives evidenced in the decree it will be enforced. *Lennahan* v. *O'Keefe*, 107 Ill. 620; *O'Hagan* v. *O'Hagan*, 4 Iowa 509; *Miller* v. *Miller*, 64 Me. 489. Contra *Martin* v. *Martin*, 33 W. Va. 695, 11 S. E. Rep. 12. If an agreement for alimony to continue after the husband's death is incorporated into the decree it will be binding. *Stratton* v. *Stratton*, 77 Me. 373, 52 Am. Rep. 779; *Storey* v. *Storey*, 125 Ill. 608, 18 N. E. Rep. 329, 1 L. R. A. 320, 8 Am. St. Rep. 417. It would seem that since alimony is in lieu of marital maintenance it should continue only during the joint lives of the parties or until the remarriage of the wife and this is the rule in nearly all the states in the absence of an agreement or a plain intent to the contrary in the decree. *Knapp* v. *Knapp*, 134 Mass. 353; *Brown* v. *Brown*, 38 Ark. 324.

EMINENT DOMAIN—ABANDONMENT OF RAILROAD CROSSING—DAMAGES.—A railroad company, under a statutory power to change a public road and substitute therefor another, constructed additional main tracks at a certain point of its road, thereby necessitating the abandonment of two crossings leading to the plaintiff's mill and built a new public road which made access to the mill so inconvenient and dangerous as to drive away its customers and necessitate its closing up. *Held*, that the company was liable to the mill owner for damages. *Foust* v. *Pennsylvania R. Co.* (1905), — Pa. —, 61 Atl. Rep. 829.

The Pennsylvania courts construe the state constitution, providing that those invested with the right of eminent domain "shall make just compensa-